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Nemonia Investments Ltd v Ambank Islamic Bhd & Ors

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCVC-306–05 OF 2018
MOHD ARIEF EMRAN J
10 AUGUST 2023

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Tort — Negligence — Banks — Duty of care — Breach of duty of care — Standard of care required of banks — Whether banks negligent in operations of bank accounts — Whether banks negligent in not ensuring that fraudulent transactions were identified and stopped — Whether banks negligent when failed to take action to freeze accounts when notices of fraud were issued — Whether banks owed duty of care to non-customer — Whether there was relationship of proximity between plaintiff and banks — Whether there was breach of duty of care — Whether breach caused losses to plaintiff

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The plaintiff in the present case had been scammed by an unidentified group of individuals whereby the plaintiff's lawyer had been duped to transfer the plaintiff's monies held in the Bank of Cyprus (including Deutsche Bank as the agent of Bank of Cyprus and Society General on behalf of Bank of Cyprus) to the defendants' banks under the accounts name of Matt Advance Trading or Weez Global Trading. The plaintiff then sued the defendants under the cause of action of negligence. The plaintiff submitted that: (a) the defendants were negligent in the operations of the accounts held by Matt Advance Trading and Weez Global Trading; and (b) the defendants were negligent in not ensuring that these fraudulent transactions were identified and stopped — in this regard, the plaintiff suggested that when the funds were transferred via instructions received through SWIFT, the defendants should have made inquiries as to the purpose of the payment and ensured that the payments made from the plaintiff's account were genuine. In deciding the case, the court had considered the following issues: (i) whether there existed a duty of care owed to the plaintiff; (ii) whether there was a breach of the duty of care; (iii) whether the breach caused losses to the plaintiff; and (iv) the standard of care required of the banks/defendants.

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Held, dismissing the plaintiff's claim against the second to fourth defendants with costs of RM20,000 to be paid by the plaintiff to each of the defendants; and allowing the plaintiff's claim against the first defendant for the sum of RM263,178.30 with costs of RM20,000 to be paid by the first defendant to the plaintiff subject to allocators:

I

(1) The defendants owed a duty of care to the plaintiff irrespective of the fact that the said company was not a customer of the banks. Considering that

the defendants were aware that the monies were transferred from the plaintiff's accounts in the Bank of Cyprus into the accounts that were held with the defendants, the defendants did have an indirect relationship with the plaintiff. Therefore, there was a relationship of proximity between the plaintiff and the defendants which fulfilled the proximity test. The court also found that it was foreseeable that the defendants' conduct could cause harm to the plaintiff and that it was fair, just, and reasonable to impose liability on the defendants for such harm (see paras 21–25).

(2) The burden of proof lay solely on the plaintiff to prove that the defendants did breach their duty of care to the plaintiff. It was for the plaintiff to show the standard that must be complied with by the defendants and that the defendants did not comply with the said standard. It was not for the defendants to refute the plaintiff's contention until such a time the burden of proof was discharged. However, in the present case, there was no evidence produced to the court as to the standards by which the banks should be adjudged. Therefore, the plaintiff had failed to discharge the burden of proof required of it in its claim for negligence concerning the issue of: (a) the opening of the accounts by the defendants on behalf of Matt Advance Trading and Weez Global Trading; (b) the compliance with money laundering regulations; and (c) enabling fraudsters to utilise banking transactions (see paras 26, 31 & 37–38).

(3) In this case, the defendants had received clear instructions from the instructing banks to pay the monies into the accounts held by Weez Trading and Matt Advance Trading. There was no evidence of any requirement or regulation that the defendants or any bank undertake any investigation as to the purpose of these payments unless it was shown there were suspicious circumstances. The court believed that at the time when the monies were received, it could not be said that the said transaction was on its face value suspicious. After all, monies were transferred through instructions received within the Swift system from credible financial institutions such as Deutsche Bank and Society General. Therefore, on the issue of monitoring the accounts of the alleged scammers when the monies were received, the court did not believe that the defendants had breached their duty of care owed to the plaintiff (see paras 45, 52 & 54).

(4) It was clear to the court that the second to fourth defendants did not breach their duty of care to the plaintiff at the time when notice of the alleged fraud was received from the instructing banks, Deutsche Bank and Society General and even from the Bank of Cyprus. When the notices were issued by the said banks to the second to fourth defendants, monies in the accounts at issue were withdrawn and the said defendants

could not have taken any action to freeze the accounts. For this reason, the court did not believe that the said defendants were negligent as claimed by the plaintiff (see paras 55–57).

(5) The court accepted that there was no evidence of a competent professional banker to support the plaintiff's contention concerning the notices received by the first defendant. However, with regard to this issue, the failure to provide such evidence was not fatal. Despite the said failure by the plaintiff, the court should consider that once notices were issued, banks should not shirk from their obligation to ensure that such transactions were stopped. The form utilised by the Bank of Cyprus, MT 999, may not have been the best or the most prudent notice to have been utilised. However, it was the contents of the said notice that must be looked at. The notice should not be ignored totally especially with the growth of scams and fraudulent activities by third parties. The court found that a prudent and reasonable banker would have taken steps immediately upon receipt of the said notice. The first defendant and its officers should have at least frozen the accounts and undertaken an inquiry as to the validity of the claim/notice by Bank of Cyprus. The first defendant was negligent when the first defendant ignored the said notice and allowed the withdrawal of the funds. The court however only limited the liability of the first defendant to the sums of monies that should have been retained after the said notices (dated 22 January 2014) were issued by the Bank of Cyprus (see paras 58–60, 62 & 64).

[Bahasa Malaysia summary

Plaintif dalam kes ini telah ditipu oleh sekumpulan individu yang tidak dikenali di mana peguam plaintif telah ditipu untuk memindahkan wang plaintif yang disimpan di Bank of Cyprus (termasuk Deutsche Bank sebagai ejen Bank of Cyprus dan Society General bagi pihak Bank of Cyprus) kepada bank-bank defendan-defendan di bawah nama akaun Matt Advance Trading atau Weez Global Trading. Plaintif kemudiannya menyaman defendan-defendan di bawah kausa tindakan kecuaian. Plaintif berhujah bahawa: (a) defendan-defendan cuai dalam pengoperasian akaun-akaun yang dipegang oleh Matt Advance Trading dan Weez Global Trading; dan (b) defendan-defendan cuai apabila gagal memastikan bahawa transaksi fraud ini dikenal pasti dan dihentikan — dalam hal ini, plaintif mencadangkan bahawa apabila dana dipindahkan melalui arahan yang diterima melalui SWIFT, defendan-defendan sepatutnya membuat pertanyaan tentang tujuan pembayaran dan memastikan bahawa bayaran yang dibuat daripada akaun plaintif adalah tulen. Dalam memutuskan kes, mahkamah telah mempertimbangkan isu-isu berikut: (i) sama ada wujud kewajipan berjaga-jaga terhadap plaintif; (ii) sama ada terdapat pelanggaran kewajipan berjaga-jaga; (iii) sama ada pelanggaran tersebut menyebabkan kerugian

kepada plaintif; dan (iv) standard penjagaan yang diperlukan oleh bank/defendan-defendan. A

Diputuskan, menolak tuntutan plaintif terhadap defendan kedua hingga keempat dengan kos RM20,000 yang perlu dibayar oleh plaintif kepada setiap defendan; dan membenarkan tuntutan plaintif terhadap defendan pertama untuk jumlah RM263,178.30 dengan kos RM20,000 dibayar oleh defendan pertama kepada plaintif tertakluk kepada alokator: B

(1) Defendan-defendan mempunyai kewajipan berjaga-jaga kepada plaintif tanpa mengira fakta bahawa syarikat tersebut bukan pelanggan bank. Memandangkan defendan-defendan sedar bahawa wang telah dipindahkan daripada akaun plaintif di Bank of Cyprus ke dalam akaun yang dipegang dengan defendan-defendan, defendan-defendan mempunyai hubungan tidak langsung dengan plaintif. Oleh itu, terdapat hubungan kedekatan antara plaintif dan defendan-defendan yang memenuhi ujian kedekatan. Mahkamah juga mendapati bahawa adalah boleh diramalkan bahawa kelakuan defendan-defendan boleh menyebabkan kemudaratan kepada plaintif dan bahawa adalah adil, saksama dan munasabah untuk mengenakan liabiliti ke atas defendan-defendan untuk kemudaratan tersebut (lihat perenggan 21–25). C D E

(2) Beban pembuktian semata-mata terletak pada plaintif untuk membuktikan bahawa defendan-defendan telah melanggar kewajipan berjaga-jaga mereka terhadap plaintif. Ia adalah untuk plaintif menunjukkan standard yang mesti dipatuhi oleh defendan-defendan dan defendan-defendan telah gagal mematuhi standard tersebut. Tiada keperluan untuk defendan-defendan menafikan hujahan plaintif sehingga pada masa beban pembuktian tersebut dilepaskan. Walau bagaimanapun, dalam kes ini, tiada keterangan dikemukakan kepada mahkamah mengenai standard di mana bank harus diadili. Oleh itu, plaintif telah gagal untuk melepaskan beban pembuktian yang diperlukan dalam tuntutannya untuk kecuaian berhubung dengan isu: (a) pembukaan akaun oleh defendan-defendan bagi pihak Matt Advance Trading dan Weez Global Trading; (b) pematuhan peraturan pengubahan wang haram; dan (c) membolehkan pelaku fraud menggunakan transaksi perbankan (lihat perenggan 26, 31 & 37–38). F G H

(3) Dalam kes ini, defendan-defendan telah menerima arahan yang jelas daripada bank-bank yang memberi arahan untuk membayar wang ke dalam akaun-akaun yang dipegang oleh Weez Trading dan Matt Advance Trading. Tiada keterangan mengenai apa-apa keperluan atau peraturan untuk defendan-defendan atau mana-mana bank menjalankan apa-apa penyiasatan tentang tujuan pembayaran ini melainkan jika ditunjukkan terdapat keadaan yang mencurigakan. Mahkamah percaya bahawa pada I

masa wang tersebut diterima, ia tidak boleh dikatakan bahawa transaksi tersebut pada dasarnya mencurigakan. Lagipun, wang tersebut telah dipindahkan melalui arahan yang diterima dalam sistem Swift daripada institusi-institusi kewangan yang boleh dipercayai seperti Deutsche Bank dan Society General. Oleh itu, mengenai isu pemantauan akaun-akaun pelaku fraud tersebut apabila wang diterima, mahkamah tidak percaya bahawa defendan-defendan telah melanggar kewajipan berjaga-jaga mereka terhadap plaintif (lihat perenggan 45, 52 & 54).

(4) Adalah jelas kepada mahkamah bahawa defendan kedua hingga keempat tidak melanggar kewajipan berjaga-jaga mereka terhadap plaintif pada masa notis fraud tersebut diterima daripada bank-bank yang memberi arahan iaitu Deutsche Bank dan Society General malahan juga daripada Bank of Cyprus. Apabila notis-notis tersebut dikeluarkan oleh bank-bank tersebut kepada defendan kedua hingga keempat, wang dalam akaun-akaun tersebut telah dikeluarkan dan defendan-defendan tersebut tidak boleh mengambil apa-apa tindakan untuk membekukan akaun-akaun tersebut. Atas sebab ini, mahkamah tidak percaya bahawa defendan-defendan tersebut cuai seperti yang didakwa oleh plaintif (lihat perenggan 55–57).

(5) Mahkamah menerima bahawa tiada keterangan jurubank profesional yang cekap untuk menyokong hujahan plaintif mengenai notis yang diterima oleh defendan pertama. Bagaimanapun, berhubung isu ini, kegagalan untuk memberikan keterangan sedemikian tidak memudaratkan. Walaupun dengan kegagalan plaintif tersebut, mahkamah harus mempertimbangkan bahawa sebaik sahaja notis-notis tersebut dikeluarkan, bank-bank tidak seharusnya mengelak daripada tanggungjawab mereka untuk memastikan transaksi sedemikian dihentikan. Borang yang digunakan oleh Bank of Cyprus, MT 999, mungkin bukan notis terbaik atau paling berhemat untuk digunakan. Bagaimanapun, kandungan notis tersebut yang mesti dilihat. Notis tersebut tidak seharusnya diabaikan sama sekali terutamanya dengan peningkatan penipuan dan aktiviti fraud oleh pihak ketiga. Mahkamah mendapati bahawa seorang jurubank yang berhemat dan munasabah akan mengambil langkah serta-merta sebaik sahaja menerima notis tersebut. Defendan pertama dan pegawai-pegawainya hendaklah sekurang-kurangnya membekukan akaun dan menjalankan siasatan tentang kesahihan tuntutan/notis oleh Bank of Cyprus. Defendan pertama cuai apabila defendan pertama mengabaikan notis tersebut dan membenarkan pengeluaran dana. Mahkamah bagaimanapun hanya mengehadkan liabiliti defendan pertama kepada jumlah wang yang sepatutnya dikekalkan selepas notis tersebut (bertarikh 22 Januari 2014) dikeluarkan oleh Bank of Cyprus (lihat perenggan 58–60, 62 & 64).]

Cases referred to

Ang Yew Meng & Anor v Dr Sashikannan a/l Arunasalam & Ors [2011] 9 MLJ 153; [2012] 3 CLJ 937, HC (refd)
Caparo Industries plc v Dickman and others [1990] 2 AC 605, HL (refd)
Chang Yun Tai & Ors v HSBC Bank (M) Bhd and other appeals [2014] 1 MLJcon 134; [2011] 7 CLJ 909, FC (refd)
Dato' Dr V Thuraisingam & Anor v Sanmarkan a/l Ganapathy & Anor [2016] 3 MLJ 227; [2015] 8 CLJ 248, CA (refd)
Hong Chuan Lay v Dr Eddie So Fook Mun [1998] 7 MLJ 481, HC (refd)
Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd [2022] MLJU 2754; [2023] 1 CLJ 495, CA (distd)
Lay Wan Yeow & Anor v Chin Kok Soon & Anor [2023] 2 MLJ 696; [2021] 1 LNS 174, CA (refd)
Nyo Nyo Aye v Kevin Sathiaseelan a/l Ramakrishnan & Anor [2020] 4 MLJ 380; [2020] 5 CLJ 82, CA (refd)
Payremalu a/l Veerappan v Dr Amarjeet Kaur & Ors [2001] 3 MLJ 725, HC (refd)
Pushpaleela a/p R Selvarajah & Anor v Rajamani d/o Meyappa Chettiar and other appeals [2019] 2 MLJ 553, FC (refd)
Shalini a/p Kanagaratnam v Pusat Perubatan Universiti Malaya (formerly known as University Hospital) & Anor [2016] 3 MLJ 742; [2016] 6 CLJ 225, CA (refd)
Shearn Delamore & Co v Sadacharamani a/l Govindasamy [2017] 1 MLJ 486; [2017] 2 CLJ 665, CA (refd)
Sundram a/l Ramasamy v Arujunan a/l Arumugam & Anor [1994] MLJU 581; [1994] 4 CLJ 300, SC (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceedings of Unlawful Activities Act 2001 ss 14, 22
Evidence Act 1950 s 101

Ramesh Sivakumar a/l Ramaveloo (with Calvin Lim Sim Guan) (Mehgala & Co) for the plaintiff.
Kingston Tan (with Kwong Ho Qong) (Heiley Hassan Tan & Partners) for the first defendant.
Shaikh Abdul Saleem (with S Nurul Ameerah Natasya) (Shaikh David & Co) for the second, third and fourth defendants.

Mohd Arief Emran J:

INTRODUCTION — BACKGROUND FACTS

[1] The plaintiff is a victim of a fraudulent scheme or scam undertaken by an unidentified group of individuals. Participants in this scheme allegedly include

A one Siti Mah bt Penggawa through her accounts held in the name of Matt Advance Trading or Weez Global Trading in the banks identified as defendants.

[2] The plaintiff contends that its lawyer, Messrs Chrysses Demetriades & Co, was duped by unknown individuals to cause funds from their account held in the Bank of Cyprus to be paid to Matt Advance Trading or Weez Global Trading. The following sums were transferred from the Bank of Cyprus to the aforesaid accounts as particularised below:

No	Bank/Defendant	Amount	Entity Receiving
1	Al-Rajhi from Deutsche Bank (on behalf of Nemonia through Bank of Cyprus)	USD49,000	Weez Global Trading is held in the account with Al-Rajhi.
2	Alliance Islamic Bank from Deutsche Bank (on behalf of Nemonia through Bank of Cyprus)	EUR61,000	Matt Advance Trading is held in the account with Alliance.
3	AmBank Islamic Bank Bhd from Society General Paris (although it is stated that instructing bank as Bank of Cyprus) and AmBank acting as an agent of AmIslamic Bank Bhd	EUR85,000	Matt Advance Trading is held in the account with AmBank Islamic.

F All these payments were made under transactions undertaken through the Swift system. The defendants had credited payments to these bank accounts after receiving the appropriate instructions from the instructing banks in accordance with the notices issued according to the Swift system.

G **[3]** I do note that AmIslamic Bank Bhd did also receive the sum of about EUR80,000 on 2 January 2014 but this issue was not pleaded by the plaintiff as part of its claim against the defendants. Therefore, I must disregard the said transaction as it was not specifically pleaded.

H **[4]** Various notices concerning the invalid payments or fraudulent transactions were issued by the following entities to the defendants which are identified below:

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(a) AmBank Islamic Bank Bhd

No	Date	Entities involved	Contents	Action taken by bank
1	17 January 2014	Society General (on behalf of Cyprus Bank) to AmIslamic Bank Bhd (Ambank as an agent of AmIslamic Bank Bhd)	Instruction to remit payment of EUR84,950 to Matt Advance Trading (client of AmBank Islamic) from the plaintiff.	Credit the account of Matt Advance Trading EUR84,950
2	22 January 2014	Bank of Cyprus to AmIslamic Bank Bhd (AmBank agent of AmIslamic Bank Bhd)	MT 999 free format message notifying AmBank Notifying that/ the earlier transaction is fraudulent and null and void.	AmIslamic did not freeze the account. Parts of the monies were withdrawn earlier. The remaining money was withdrawn from the account held in AmIslamic Bank Bhd on 23 January 2014.

(b) Alliance Islamic Bank Malaysia Bhd

No	Date	Entities involved	Contents	Action taken by Bank
1	30 December 2013	Deutsche Bank (as the agent of Cyprus Bank) to Alliance Islamic Bank	Instruction to remit payment of EUR60,928 to Matt Advance Trading (client of AmBank Islamic) from the plaintiff.	Alliance seeks clarification from Deutsche Bank on 3 January 2014 seeking the purpose of the said payment.

2	8 January 2014	Deutsche Bank (as the agent of Cyprus Bank) to Alliance Bank	Deutsche Bank informed Alliance Bank that the payment was for the invoice for Bontera Builders Properties.	The account of Matt Trading was credited based on the instruction of Deutsche Bank.
3	23 January 2014	Bank of Cyprus to Alliance Bank	FIN 999 Bank of Cyprus informed Alliance Bank that the alleged payment was fraudulent and requested urgent action.	Payment could not be stopped as Matt Trading did withdraw the funds in full before 23 January 2014. Alliance Bank informed Bank Cyprus in the Swift message dated 22 January 2014.

(c) Al-Rajhi Bank Bhd

No	Date	Entities involved	Contents	Action taken by Bank
1	13 December 2013	Deutsche Bank to Al-Rajhi Bank Bhd	Deutsche Bank notified Al-Rajhi to remit payment of EUR48,933 into the account of Weez Global Trading on the instruction of the plaintiff.	The accounts of Weez Global Trading were credited by Al-Rajhi Bank.

2	13 January 2014	Bank of Cyprus to Al-Rajhi Bank	MT 999 free format message notifying Al-Rajhi Bank. Notifying that/the earlier transaction is fraudulent and null and void.	No monies were fully withdrawn before 13 January 2014.
3	23 January 2014	Deutsche Bank to Al-Rajhi Bank Bhd	FIN 199 free format message Deutsche Bank notified Al-Rajhi that the remitter of payment claimed that the payment was fraudulent and to consider the payment order null and void.	Payment could not be stopped as monies were withdrawn before 13 January 2014.
4	27 January 2014 29 January 2014 13 February 2014	Deutsche Bank (agent of Cyprus Bank and Al-Rajhi) to Al-Rajhi Bank Bhd	FIN 999 free format message Deutsche Bank notified Al-Rajhi that the remitter of payment claim that the payment was fraudulent and has reported the same to the authorities. Requested that the recipient account be blocked.	Payment could not be stopped as monies were withdrawn before 13 January 2014. Al-Rajhi informed Deutsche Bank that the payment was withdrawn in full earlier and could not be stopped by notice in the Swift system dated 5 February 2014.

[5] The plaintiff claims that the defendants had been negligent in undertaking their business as bankers in Malaysia and that their aforesaid negligence caused damages to the plaintiff. Notices of demands and meetings were held with the said defendants. Unhappy with the responses, the plaintiff brought this action which led to the trial held on 28 October 2021 and 7 March 2023. The following witnesses gave evidence:

(a) plaintiff's witness:

(i) Sinelnik Yury (WSPW1).

(b) first defendant's witness:

(i) Mohd Zulhaini bin ZuallCobbey (WSDW1).

(c) second defendant and fourth defendant's witness:

(i) Anizan bt Mohamad Ali (WSDW2); and

(ii) Rozita bt Talib (WSDW3).

(d) third defendant's witness:

(i) Suzzana Alysa bt Surul (WSDW4); and

(ii) Edrian bin Mohd (WSDWS).

THE PLAINTIFF'S CLAIM AND DEFENCE

[6] The plaintiff claims that the defendants were:

(a) negligent in allowing the said fraudsters to open and operate their accounts with the bank;

(b) negligent in not ensuring that these fraudulent transactions are identified and stopped;

(c) negligent by failing to monitor inbound payments to identify potentially suspicious activities or turning a blind eye to suspicious activities;

(d) negligent in allowing fraudsters to abuse and misuse the banking system to commit fraud;

(e) negligent by failing to comply with regulatory requirements to prevent money laundering;

(f) negligent by failing to verify the authenticity of payment orders as the parties, Nemonia and the fraudsters (Matt Advance Trading and Weez Global) did not have any relationship earlier; and

(g) negligent by facilitating or making it easier for the fraudster to undertake

their scheme against the plaintiff.

[7] The defendants deny the above claims and allege that they were not negligent, especially taking into account that: (i) they had acted under the instructions given by the paying bank (Deutsche Bank and Society General); and/or (ii) that they did not owe any duty of care to the plaintiff as it was not their clients and that it would be too remote to expect their actions may have any impact on the plaintiff.

[8] The first defendant specifically contends that there is no evidence that the said transaction is fraudulent. The said bank's solicitors contend that the transfer of the said funds was genuine.

APPLICABLE LAW

Whether there exists a duty of care owed to the plaintiff

[9] Before the defendants are held liable for the alleged negligence, it is incumbent upon the plaintiff to prove that the defendants owed a duty of care to it and that the breach of the said duty caused losses to the plaintiff.

[10] To determine whether the defendants owed any duty of care to the plaintiff, it must be shown that: (i) there is a relationship of proximity between the plaintiff and the defendants (the proximity test); (ii) it is foreseeable that the defendant's conduct could harm to the plaintiff (foreseeability test); and (iii) it is fair, just and reasonable to impose liability to the defendants for such harm (policy consideration). I refer to *Caparo Industries plc v Dickman and others* [1990] 2 AC 605, *Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd* [2022] MLJU 2754; [2023] 1 CLJ 495 and *Pushpaleela a/p R Selvarajah & Anor v Rajamani d/o Meyappa Chettiar and other appeals* [2019] 2 MLJ 553.

[11] The determination of whether the said defendants and the banks owned any duty of care to the plaintiff will have to be determined on the factual matrix of each case. As Lee Swee Seng JCA pointed out one should not determine such issues merely based on pigeonholing cases into neat categories despite how hard one wishes to do so.

[12] The fact that the defendants did not have any direct relationship with the plaintiff, ie, the company is not a customer of the banks or has any contractual relationship, does not automatically mean that the banks do not owe any duty of care. I will have to determine this by taking into account the factual matrix of this case and applying the test as stated earlier to the facts of

this case.

Standard of care to be expected of the banks

[13] This court will then have to determine the standard of care that is owed by the banks/defendants to the plaintiff. I believe the standard of care that will be expected of such banks is 'whether a reasonably prudent banker, faced with the same circumstances, would regard the action taken on the facts justifiable'.

[14] It is also trite that 'a bank has to ensure that: (i) payment is made with the authority of the customer; and (ii) the person who is being paid is entitled to receive the payment. There is breach of duty of care if a bank makes payment without the customer's authority or mandate. No banking transaction would be safe if a bank flouts that in the name of convenience or no reason to be 'put on inquiry' (per Lee Swee Seng JCA in *Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd*).

[15] However, that is not the end of the issue for determination. This court is still required to determine the standard of care required of the banks/defendants. This court must determine the standard expected of a reasonably prudent banker and test what the reasonably prudent banker would have done in the circumstances of this case.

[16] I refer to *Nyo Nyo Aye v Kevin Sathiaseelan a/l Ramakrishnan & Anor* [2020] 4 MLJ 380; [2020] 5 CLJ 82, *Dato' Dr V Thuraisingam & Anor v Sanmarkan a/l Ganapathy & Anor* [2016] 3 MLJ 227; [2015] 8 CLJ 248, *Shearn Delamore & Co v Sadacharamani a/l Govindasamy* [2017] 1 MLJ 486; [2017] 2 CLJ 665 and *Lay Wan Yeow & Anor v Chin Kok Soon & Anor* [2023] 2 MLJ 696; [2021] 1 LNS 174.

[17] There is no hard and fast rule when one considers this issue. The reported cases show that there are circumstances where the court could consider, based on the facts of each case, whether the action of a professional is negligent or otherwise, even if the claimant fails to tender evidence of a competent professional to support the said contention. This may be applicable where it is so appropriate and obvious that the court could consider the allegation on its own. One could see this in *Nyo Nyo Aye v Kevin Sathiaseelan a/l Ramakrishnan & Anor* [2020] 4 MLJ 380; [2020] 5 CLJ 82 and this is to be contrasted with the decision of the Court of Appeal in *Shearn Delamore & Co v Sadacharamani a/l Govindasamy* [2017] 1 MLJ 486; [2017] 2 CLJ 665.

[18] An example of the application of this requirement can be seen in *Shalini a/p Kanagaratnam v Pusat Perubatan Universiti Malaya (formerly known as University Hospital) & Anor* [2016] 3 MLJ 742; [2016] 6 CLJ 225 where

Hamid Sultan Abu Backer JCA stated:

> [9] In cases of professional negligence and/or medical negligence, the plaintiff has to prove four elements. They are: (i) duty of care; (ii) breach of standard of care; (iii) breach of duty of care; and (iv) caused damages. In consequence, the plaintiff has to lead evidence to show the standard of care has been breached. The doctrine of res ipsa loquitur will not ordinarily apply as the plaintiff will have to discharge the legal burden and only after the legal burden has been discharged, the defendant has to satisfy that legal duty was not breached.
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> [10] It is also well-established in medical negligence cases that the plaintiff must establish the appropriate standard of care and demonstrate that the standard of care has been breached, with expert evidence. The trial courts observation on this issue reads as follows:
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> > The court was satisfied that the plaintiff had failed to discharge her burden of proving her claim on a balance of probability.
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> My reasons are as follows:
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> > (1) The plaintiff failed to call Dr Nithya Ramamurthy from Malar Hospital whose very opinion is the thrust of her pleaded claim (see para 11–12, p 57, Bundle A);
> >
> > (2) The plaintiff's only witness other than herself and her father was PW1, who, by the plaintiffs own submission, merely interpreted a recent cancer market report which showed that the plaintiff currently no longer has cancer;
> >
> > (3) No other expert evidence has been adduced by the plaintiff in support of her claim that she did not have cancer in 2000 and 2006; and
> >
> > (4) More importantly, no evidence was led during the trial or sought during the discovery stage of the proceedings to prove any of her pleaded allegations of negligence against the first and second defendants.
>
> [11] In ordinary negligence case, 'standard of care' will not be in issue. However, in 'professional negligence' case, the burden is placed on the plaintiff to establish the 'standard of care' has been breached. Learned author Bullen and *Leake and Jacobs on Precedents and Pleadings* (28th Ed), have separated the precedents and pleadings for negligence and professional negligence to make out the distinction. In *Dato' Dr V Thuraisingam & Anor v Sanmarkan Ganapathy & Anor* [2016] 3 MLJ 227; [2015] 8 CLJ 248 , Hamid Sultan Abu Backer JCA sitting with Badariah Sahamid JCA and Prasad Sandosham Abraham JCA had, inter alia, held:
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> > (2) The threshold for the plaintiffs to succeed is high in contrast to ordinary negligence cases. However, even though the threshold is high for the plaintiff, once duty of care as well as standard of care has been breached and it is established against the doctor, case laws have placed the evidential burden on the doctor to rebut the plaintiffs' allegation when such allegation is supported by expert evidence to say the doctor has not satisfied the standard of care, expected of his professional standing.

A APPLICATION OF THE LAW TO THE FACTS OF THIS CASE

[19] The issues that have been raised by the plaintiff could be categorised as follows:

B (a) allegation that the defendants were negligent in the operations of the accounts held by Matt Advance Trading and Weez Global:

(i) negligent in allowing the said fraudsters to open and operate their accounts with the bank;

C (ii) negligent by failing to monitor inbound payments to identify potentially suspicious activities or turning a blind eye to suspicious activities;

(iii) negligent in allowing fraudsters to abuse and misuse the banking system to commit fraud;

D (iv) negligent by failing to comply with regulatory requirements to prevent money laundering;

(v) negligent by failing to verify the authenticity of payment orders as the parties, Nemonia and the fraudsters (Matt Advance Trading and Weez Global) did not have any relationship earlier; and

E (vi) negligent by facilitating or making it easier for the fraudster to undertake their scheme against the plaintiff.

F (b) negligent in not ensuring that these fraudulent transactions are identified and stopped:

(i) when money was received; and

(ii) when the notice was issued by the instructing banks.

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[20] I will deal with the above in the following paragraphs.

The allegation that the defendants were negligent in the operations of the accounts held by Matt Advance Trading and Weez Global duty of care owed to the plaintiff

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[21] I am of the opinion that the defendants do owe a duty of care to the plaintiff irrespective of the fact that the said company is not a customer of the banks.

I

[22] Considering that the defendants are aware that the monies were transferred from the accounts of the plaintiff from the Bank of Cyprus, the said defendants did have an indirect relationship with the plaintiff.

[23] In this day and age, I do not find it acceptable for a bank in the circumstances of this case to say that there is no relationship of proximity between them and the plaintiff. The monies were transferred from the plaintiff's accounts in the Bank of Cyprus into the accounts that were held with the defendants. There is a relationship of proximity between the plaintiff and the defendants fulfilling the proximity test.

[24] I also find that it is foreseeable that the defendant's conduct could harm to the plaintiff. If for example the instructions received through the Swift system were not complied with then there is a clear possibility that the plaintiff may suffer damages. One could see this operating in *Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd*.

[25] Finally, I find that it is fair, just and reasonable to impose liability to the defendants for such harm. Banks in this era, should bear some responsibility and owe a duty of care to users of the financial system irrespective of whether they are their customers or otherwise.

Whether the defendants breach the said duty of care

[26] The second issue that must be determined is whether the said defendants were in breach of the said duty of care. The burden of proof lies solely on the plaintiff to prove that the defendants did breach their duty of care to it. It is for the plaintiff to show the standard that must be complied with by the defendants and that the defendants did not comply with the said standard.

[27] In this case, the plaintiff's sole witness was the alleged beneficial owner of the shares in the company, Sinelnik Yury.

[28] Much of his evidence revolves around the alleged scam undertaken by Siti Mah bt Penggawa with the assistance of third parties that caused monies held in the Bank of Cyprus to be transferred into the accounts of Matt Advance Trading and Weez Global Trading.

[29] The witness statement of the plaintiff dealt substantially with how the scam was undertaken and how his lawyers in Cyprus were hoodwinked by these scammers to transfer the said monies into these accounts.

[30] The witness statement only dealt with the alleged negligence of the said defendants in paras 22 to 25 of the said document.

[31] There is no evidence tendered or produced to this court as to the standards at which the banks should be adjudged. Despite requests by this court that this standard of a reasonably competent banker is identified or at

A least the standard expected by the Central Bank of Malaysia or internally by these banks as to: (i) how accounts are to be opened; (ii) how accounts are to be monitored; (iii) how monies received overseas are certified; (iv) what anti-money laundering standards are to be complied with; and (v) what a reasonably competent banker would have undertaken, there was no evidence B provided to this court.

[32] This is crucial, as unlike that of the conduct of an advocate and solicitors in a negligence case, this court does not have the general requisite knowledge of the practice to be expected of a reasonably competent banker that C the plaintiff wishes to rely on. The burden of proof to show the standard that they wish to put the defendants to rely solely on the plaintiff. It is not for the defendant to prove the standard until such time the plaintiff prove the case of negligence, especially that of the standard of care that they rely on. See s 101 of the Evidence Act, *Sundram a/l Ramasamy v Arujunan a/l Arumugam & D Anor* [1994] MLJU 581; [1994] 4 CLJ 300 and *Ang Yew Meng & Anor v Dr Sashikannan a/l Arunasalam & Ors* [2011] 9 MLJ 153; [2012] 3 CLJ 937.

[33] An example could be seen from the judgment of the Court of Appeal in *Dato' Dr V Thuraisingam & Anor v Sanmarkan a/l Ganapathy & Anor* [2016] 3 E MLJ 227; [2015] 8 CLJ 248:

> [26]A useful guideline in medical negligence cases is always for the trial court to keep in mind the salutary words of Lord Denning in *Hucks v Cole* [1993] 4 Med LR 393, where His Lordship asserted that to find liability against a doctor 'his conduct should be deserving of censure or inexcusable'. That is to say, the threshold for the F plaintiffs to succeed is high in contrast to ordinary negligence cases. However, even though the threshold is high for the plaintiff, once duty of care as well as standard of care has been breached and it is established against the doctor, case laws have placed the evidential burden on the doctor to rebut the plaintiffs' allegation when such allegation is supported by expert evidence to say the doctor has not satisfied the G standard of care, expected of his professional standing. In *Bolam*'s case, McNair J has suggested a guideline to determine if the doctor has breached the standard of care. His Lordship's guideline reads as follows:
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> > A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular H art ... Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view.
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> [27] The facts of *Bolam*'s case as said earlier, not only relates to diagnosis and treatment but also to medical advice. One of the articles published in the Malayan I Law Journal on this point reads as follows:
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> > The *Bolam* test was applied to the medical aspects of diagnosis, advice and treatment.

[28] Cases and articles assert that *Bolam*'s case advocates 'Medical Judgment'. In *Sidaway v Board of Governors of the Bethlem Royal Hospital* [1985] AC 871, Lord Scarman opined:

> The *Bolam* principle may be formulated as a rule that a doctor is not negligent if he acts in accordance with a practice accepted at the time as proper by a responsible body of medical opinion even though other doctors adopt a different practice. *In short, the law imposes the duty of care: but the standard of care is a matter of medical judgment.* (Emphasis added.)

[29] That is to say, the trial court is bound by the medical opinion and will not find the doctor negligent as long as there is a respectable body of medical opinion that supports his action. 'Medical Judgment' proposition impinges on the Malaysian court's role to adjudicate on the matter and in the context of Evidence Act 1950, opinion of experts is not meant to be the last say on the issue. Judicial supervision of the court on the conduct of any body or person cannot be curtailed by any judicial decision per se unless such protection is given to the class of person by the Federal Constitution. In addition, the patient being a layperson, ordinarily may not have the financial means and may also be at a disadvantage as he may have difficulty to bring 'respectable body of medical opinion' to match the doctor's expert's evidence. In consequence, judicial supervision and determination will be of assistance to the patient in dealing with medical negligence cases, which is also part of our jurisprudence to do so.

[30] *Bolam*'s case in our view, does not in any way attempt to impinge on the role of the Malaysian court to decide on the issue of negligence independently after weighing experts' medical evidence. It is not totally correct to say 'the standard of care is a matter of medical judgment' in the Malaysian context. Further, under the Evidence Act 1950, an expert view, in order to qualify as representative of a 'responsible body of medical opinion had to satisfy the threshold test of logic' (see *Dr Khoo James & Anor v Gunapathy d/o Muniandy and Another Appeal* [2002] 2 SLR 414 (*Dr Khoo James*)). This proposition was well articulated in the case of *Bolitho*.

[34] I also refer to *Shalini a/p Kanagaratnam v Pusat Perubatan Universiti Malaya (formerly known as University Hospital) & Anor* [2016] 3 MLJ 742; [2016] 6 CLJ 225, *Hong Chuan Lay v Dr Eddie So Fook Mun* [1998] 7 MLJ 481, *Payremalu a/l Veerappan v Dr Amarjeet Kaur & Ors* [2001] 3 MLJ 725 and *Shearn Delamore & Co v Sadacharamani a/l Govindasamy* [2017] 1 MLJ 486; [2017] 2 CLJ 665 that reiterates the above requirement of duty to prove the standard of care required of such professional. This is to be contrasted to that of a typical road accident case where such requirements may not be necessary as the law presumes the standard to be that of a reasonable man on the *Clapham Omnibus* or the *Malaysian MRT*.

[35] In this case, I reiterate that the plaintiff has only produced Mr Sinelnik Yury. The plaintiff did not call any party or any person to testify and explain the

standard expected of a reasonably competent banker in: (i) opening an account; (ii) monitoring accounts; (iii) standard operating procedure in Swift transactions; and (iv) required anti-money laundering procedures that are required by banks or by the Central Bank of Malaysia. At the very least the plaintiff should have produced the guidelines or regulations made out by the Central Bank of Malaysia or internally of these banks or other banks to enable this court to ascertain the standard of care required of a professional banker.

[36] I do note that Mr Sinelnik Yury did give evidence of his experience overseas as to what the banks there undertake and his views as to the standard he believes should be adhered to. However, I do note that he is not a banker and has been an international businessman since 1992 and was within the Russian Cabinet briefly from 1999 to 2001.

[37] I reiterate that it is not for the defendants to refute the plaintiff's contention until such time the burden of proof is discharged.

[38] Therefore, I find that the plaintiff has failed to discharge the burden of proof required of it in its claim for negligence concerning the issue of: (i) opening of the accounts by the defendants on behalf of Matt Advance Trading and Weez Global Trading; (ii) compliance with money laundering regulations; and (iii) enabling fraudsters to utilise banking transactions.

[39] An important consideration that I have considered is that at the time of opening of those accounts by Matt Advance Trading, Weez Global Trading and Siti Mah bt Penggawa with the defendants, I find that the evidence of: (i) Mohd Zulhaini bin Zuall (WSDW(1)), (ii) Rozita bt Talib (WSDW(3)), and (iii) Edrian bin Mohd (WSDW(5)), all explained the process at which the said bank accounts were opened. The said witnesses explained that the records indicate that the requirements for the opening of the accounts were undertaken by the defendants. The officers in charge of the opening of the accounts had checked the particulars of the client, tested the clients based on the internal testing of the banks, undertaken a biometric test of the account holder, checked the business registration of the said account holder and undertaken biometric tests on Siti Mah bt Penggawa. The standard due diligence tests were undertaken by the banks at the time of the opening of the accounts.

[40] Like I have said earlier there is no evidence produced by the plaintiff to show the alleged standard that the defendants should have complied with. This is crucial evidence missing from the outset of the plaintiff's case.

[41] The plaintiff's counsel should have at least produced the guidelines of Bank Negara Malaysia, if any, on the issue of: (i) opening of accounts; (ii) monitoring of accounts; and (iii) anti-money laundering, and tested these

requirements to what was undertaken by the defendants. No such attempt was made by plaintiff's counsel despite repeated notice given to counsel during the trial. As such, this court has no choice but to find against the plaintiff on the issue of negligence on the above claims.

Negligent in not ensuring that these fraudulent transactions are identified and stopped — at the time when money was received

[42] The first issue I have to consider is the plaintiff's contention that when the funds were transferred via instructions received through SWIFT, the defendants should have made inquiries as to the purpose of the payment and ensured that the payments made from the plaintiff's account were genuine.

[43] This court is aware that s 14 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceedings of Unlawful Activities Act 2001 ('the AMLA') states that the defendants are required to report to Bank Negara Malaysia any transaction exceeding RM50,000 or where it could be shown that there exist any circumstances of the transaction that provides any reason to suspect that the proceeds are from unlawful activity. Section 22(1) of the same Act requires officers of such banks to take all reasonable steps to ensure compliance with the requirements of prompt reporting.

[44] What is important is that it must be shown by the plaintiff that there exist circumstances which would have raised suspicion on the part of the officers of the defendants that require compliance with ss 14 and 22 of the AMLA.

[45] I believe that at the time when the monies were received, it could not be said that the said transaction was on its face value suspicious. After all, monies were transferred through instructions received within the Swift system from credible financial institutions such as Deutsche Bank and Society General. These are international financial institutions of credible standing who would be expected to have undertaken their internal queries before payment instructions are transferred to the accounts with the defendants.

[46] Furthermore, the officers of the second, third and fourth defendants, namely Suzzanna Alysa bt Surul ('WSDW(4)') and Anizan bt Mohamad Ali ('WSDW(2)'), explained that they had checked with Deutsche Bank as to the purpose of the said payment or checked with the client/customer as to the purpose of the said payment. Having received a response from Deutsche Bank and the customer as to the purpose of the said payment, it cannot be said that these defendants were negligent.

[47] I also must consider the steps taken by the second, third and fourth defendants at the time when the transaction was undertaken and not with hindsight as suggested by the plaintiff. When the transaction was instructed by the instructing banks, Deutsche Bank and Society General, the defendants would not have known or could have foreseen that the said transactions were undertaken fraudulently by scammers.

[48] Concerning the first defendant, I also do not find any evidence of any wrongdoing justifying a claim of negligence against the said entity when they received the instructions to remit the payment into the relevant accounts.

[49] I have also considered the decision of the Federal Court in *Chang Yun Tai & Ors v HSBC Bank (M) Bhd and other appeals* [2014] 1 MLJcon 134; [2011] 7 CLJ 909, where Zulkefli Makinudin FCJ held:

> [15] It is to be noted the SPA has already been executed before the end financing facilities were granted. Therefore, the respondent can presume that the SPA which the appellants had entered into has been ascertained by the appellants to be valid. It would be too onerous to require the respondent to investigate or enquire into a transaction or contract to which they are not a party. Banking business will be rendered impracticable and burdensome if this was so. In this regard the courts should not impose such a requirement that may impede the flow of commerce. On this point Edgar Joseph Jr FCJ in *Co-Operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd* [1995] 3 MLJ 313; [1995] 4 CLJ 300 in delivering the judgment of this court cautioned at p 313 as follows:
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> > ... a commercial judge must be anxious about the impact that a decision may have on the proper functioning of the commercial community.

[50] I have earlier referred to the decision of the Court of Appeal in *Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd* [2022] MLJU 2754; [2023] 1 CLJ 495. I am aware that Lee Swee Seng JCA in the said case did hold:

> [124] A reasonably prudent investment bank having received the sum of RM10m from a depositor would act in a commercially acceptable way to verify the identity of the depositor, the purpose of the deposit and instructions with respect to the deposit of the substantial sum of RM10m. Thus, in *Niru Battery Manufacturing Co v. Milestone Trading (No 1)* [2002] 2 All ER (Comm) 705 at p 741, Moore-Bick J held:
>
> > [135] ... I do not think that it is desirable to attempt to define the limits of good faith; it is a broad concept, the definition of which, insofar as it is capable of definition at all, will have to be worked out through the cases. In my view it is capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself. The factors which will determine whether it is inequitable to allow the claimant to obtain restitution in a case of mistaken payment will vary from case

> to case, but where the payee has voluntarily parted with the money much is likely to depend on the circumstances in which he did so and the extent of his knowledge about how the payment came to be made. Where he knows that the payment he has received was made by mistake, the position is quite straightforward: he must return it. This applies as much to a banker who receives a payment for the account of his customer as to any other person: see, for example, the comment of Lord Mersey in *Kerrison v Glyn, Mills, Currie & Co* (1912) 81 LJKB 465 (HL) at p 472 ...
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> [125] We further agree that there was a breach of this duty of care on the part of 01 when it channelled the plaintiff's RM10m into D3's trading account without due care and regard for the plaintiff's instructions. There was no mandate by the plaintiff to pay out its RM10m to D3. D1 is vicariously liable for the acts of SP2 and its Credit Control Department. D1's breach of its duty of care undoubtedly caused the plaintiff to suffer the loss of RM10m or such lesser amount after taking into consideration the 'dividends' it received.

[51] However, the facts as they appear in the aforesaid case are substantially different to the facts before this court. In that case, it was clear that the defendant had failed to comply with the bank's own internal standard operating procedures and that there was a clear breach of the mandate received when it received the RM10m cheque from the plaintiff. The Court of Appeal held that the bank should have then inquired as to whom the said cheque is to be deposited into when the instructions were unclear as the cheque was made in the name of the bank instead of a particular company or entity.

[52] In this case, the defendants had received clear instructions from the instructing banks to pay the aforesaid sums into the accounts held by Weez Trading and Matt Advance Trading. There is no evidence of any requirement or regulation that the defendants or any bank undertake any investigation as to the purpose of these payments unless it is shown there are suspicious circumstances. As I said earlier, the facts as it appears to me, at the time when the said sums were received, do not on their side show any suspicious circumstances justifying any form of investigation as suggested by the plaintiff.

[53] Counsel for the plaintiff did not provide any proof of any directions or regulations or any form of rules that are required by Bank Negara Malaysia or any internal guidelines or rules. This was undertaken in *Koperasi Sahabat Amanah Ikhtiar Bhd v RHB Investment Bank Bhd* [2022] MLJU 2754; [2023] 1 CLJ 495 as seen in paras 99 to 166 of the judgment of the Court of Appeal. In this case no such attempt was undertaken by counsel despite being reminded by court of the need to do the same.

[54] Therefore, on the issue of monitoring the accounts of the alleged scammers when the monies were received, I do not believe that the said defendants have breached their duty of care owed to the plaintiff.

Duty to act when notice of fraud was received from Deutsche Bank, Society General and Bank of Cyprus

[55] It is clear to me that the second to fourth defendants did not breach their duty of care to the plaintiff at the time when notice of the alleged fraud was received from the instructing banks, Deutsche Bank and Society General and even from the Bank of Cyprus.

[56] When the notices were issued by the said banks to the second to fourth defendants, monies in the accounts at issue were withdrawn and the defendants could not have taken any action to freeze the accounts.

[57] For the aforesaid reason, I do not believe that the said defendants were negligent as claimed by the plaintiff.

[58] As to the first defendant, as I have said earlier, I accept that there is no evidence of a competent professional banker to support the plaintiff's contention concerning the notices received by the said defendant.

[59] However, with regard to this issue, the failure to provide such evidence is not fatal. I am of the opinion that despite the said failure by the plaintiff, this court should consider that once notices are issued, banks should not shirk from their obligation to ensure that such transactions are stopped. The form utilised by the Bank of Cyprus, MT 999, may not have been the best or the most prudent notice to have been utilised. However, it is the contents of the said notice that must be looked at.

[60] I understand and appreciate that the first defendant's witness did suggest that it is their practice for MT 999 to be ignored and that they do not have any relationship with the Bank of Cyprus. That may have been the practice of the first defendant. However, especially with the growth of scams and fraudulent activities by third parties, I find that such notices should not be ignored totally. The said first defendant should have undertaken an investigation immediately upon receipt of the said notice even it if was in the form of MT 999. The first defendant and its officers should have at least frozen the accounts and undertaken an inquiry as to the validity of the claim/notice by Bank of Cyprus. They should not have ignored it, as they have undertaken in this case, merely because of the form used by the Bank of Cyprus. It is the substance of the allegation that should have been looked at and acted upon. I find a prudent and reasonable banker would have taken steps immediately upon receipt of the said notice.

[61] As I said earlier, the plaintiff had failed to call any expert the practice of a reasonable prudent banker. The first defendant on the other hand relies on

the evidence of WSDW1 . The first defendant's did state that it is their practice that such notices in MT 999 are usually ignored and to use his own words — are regarded as garbage. However, I do not accept that this practice by bankers, if any, as being reasonable, especially considering the current issues of fraud and scams that have been undertaken utilising accounts in our banking industry. I accept generally that this court will not second guess the practice undertaken within the industry, as those within the medical profession. However, when the practice is unreasonable, it is the obligation of this court to correct the said practice and set the standards that should be undertaken by the banks.

[62] Therefore, I find that the first defendant should have taken the reasonable step of certifying the issues highlighted by Bank of Cyprus and frozen the accounts until such time it is satisfied that the said complaint is not genuine. To ignore the said notice and allow the withdrawal of the funds to me is evidence of the negligence of the first defendant.

[63] I also accept that the Bank of Cyprus or the plaintiff may not have a direct contractual relationship with the first defendant. These considerations should not have closed the eyes of the first defendant. The contents of the said notice is sufficient to have caused the first defendant to take appropriate action to freeze the account and retain the sums remaining until such time they could ascertain the realities of the said transaction. To merely put the notice aside is wrong and unreasonable, especially considering the current climate of scams and money laundering being issues facing international banks.

[64] I however only limit the liability of the first defendant to the sums of monies that should have been retained after the said notices were issued by the Bank of Cyprus dated 22 January 2014. The evidence before me shows that the sums of RM5,004 were withdrawn on 22 January 2014 and a sum of RM315,000 were withdrawn on 23 January 2014 after the notice was issued by the Bank of Cyprus.

ANCILLARY ISSUE RAISED BY THE DEFENDANTS — OTHER DEFENCES

Alleged genuine transaction and identity/authorisation of plaintiff's witness

[65] Another issue raised by the defendants pertains to the validity of the said transaction. They allege that there is no evidence that the plaintiff's sole witness is the representative or beneficial owner of the said entity. They also allege that the transaction with Weez Trading and Matt Advance Trading was genuine.

[66] Despite strenuous cross-examination of the plaintiff's witness as revealed in the notes of evidence, I find that the plaintiff's evidence shows that

A the said witness is the representative of the plaintiff, and he is the owner of the said entity. I also find that there is sufficient evidence, as seen in the emails and the reports filed by the plaintiff with the authorities to show that the transactions were fraudulent. These sums were wrongly paid into the accounts held with the defendants by scammers posing as him using fake emails. The B lawyers in Cyprus were duped by these scammers and the Bank of Cyprus acted on the instructions of these lawyers.

Estoppel — Alleged that the plaintiff has been fully compensated for the action against the scammers

C

[67] The defendants also contend that as the plaintiff did constitute proceedings against the scammers, in Civil Suit No 22NCC-56–03 of 2019 as well as the enforcement proceedings against Siti Mah bt Penggawa, then the plaintiff would have recovered all their damages and should be estopped from D making any further claims against the defendants.

[68] I have considered the said documents and court orders before me and find that the plaintiff has not successfully recovered the full sums wrongly E withdrawn from its account in Cyprus.

[69] The plaintiff is not estopped or barred in any way from claiming these sums from the defendants. However, as I have said earlier, I only find liability against the first defendant for the sum of RM315,000 due to the first F defendant's failure to take appropriate steps at the time the notice is received from the Bank of Cyprus. This sum is reduced to the sum of RM263,178.30 after considering the amount garnished by the plaintiff RM51,821.70 from the account held with the first defendant.

G DECISION OF THIS COURT

[70] For the above reasons, I make the following orders:

(a) the claim against the second to fourth defendants are dismissed with costs H of RM20,000 to each defendant to be paid by the plaintiff;

(b) the claim against the first defendant is allowed for the sum of RM263,178.30 with costs of RM20,000 to be paid by the first defendant to the plaintiff; and

I (c) the above orders are subject to the usual allocators.

Order accordingly.

Reported by Dzulqarnain Ab Fatar